

**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the Matter of

EB Docket No. 03-152

**WILLIAM L. ZAWILA**

Facility ID No. 72672

Permittee of FM Station KBGS,  
Coalinga, California

**AVENAL EDUCATIONAL SERVICE, INC.**

Facility ID No. 3365

Permittee of FM Station KAAX,  
Avenal, California

**CENTRAL VALLEY EDUCATIONAL  
SERVICES, INC.**

Facility ID No. 9993

Permittee of FM Station KYAF,  
Firebaugh, California

**H. L. CHARLES d/b/a FORD CITY  
BROADCASTING**

Facility ID No. 22030

Permittee of FM Station KZPE,  
Ford City, California

**LINDA WARE d/b/a LINDSAY  
BROADCASTING**

Facility ID No. 37725

Licensee of FM Station KZPO,  
Lindsay, California

**WESTERN PACIFIC  
BROADCASTING, INC.**

File BR-19970804YJ  
Facility ID No. 71936

For Renewal of License for AM  
Station KKFO, Coalinga, CA

**TO: Chief Administrative Law Judge**

**REPLY TO OPPOSITION TO  
MOTION TO DISMISS ENTIRE PROCEEDING**

Central Valley Educational Services, Inc. (CVES) and Avenal Educational Services, Inc.,

(AES) by their attorney (collectively, “Movants”) here reply to the Enforcement Bureau's September 29 opposition to our motion to dismiss the entire action. In its totality and in its specifics, the opposition lacks merit.

Our motion was based upon the Commission's established policy that conduct which has occurred more than ten years ago should not be considered, *Policy Regarding Character Qualifications in Broadcast Licensing, Report, Order and Policy Statement*, 102 FCC 2d 1179 (1986) at 1229 (the “*Character Policy Statement*”)<sup>1</sup>. The Bureau argues that this is not a “hard and fast” rule, p. 2. It claims to find in the expression of the rule “as a general matter” an invitation to staff and parties to make exceptions, pp. 3-4. This argument, supposing that the rule is not a rule, does not find much traction. There are two and only two exceptions to the policy, and they are narrowly and explicitly drawn.

First, as the Enforcement Bureau has stated elsewhere, the Commission may consider *adjudicated* findings of misconduct before the ten-year marker, but not mere *allegations*.

Although the 1986 Character Policy Statement provides a ten-year limitation on consideration of allegations of misconduct, it does not limit consideration of adjudicated misconduct that has already been litigated.

*Robert D. Landes*, 22 FCC Rcd 19979, 19982 (EB, 2007). Here, all the issues are based upon allegations of FCC-related misconduct. None has been adjudicated.

Secondly, the Character Policy Statement, as modified in 1990, made an exception to the ten-year bar for non-FCC related misconduct, provided it constituted a felony, or had attributes (such as a one-year prison term) that would enable the Commission to treat the misconduct as equivalent to a felony under Federal law.

But under the Commission's 1990 Policy Statement, “evidence of *any* conviction constituting a felony will be relevant to our evaluation of the applicant's or licensee's character.”

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<sup>1</sup> Modified, 5 FCC Rcd 3252 (1990), modified, 6 FCC Rcd 3448 (1991), modified, 7 FCC Rcd 6564 (1992).

*David Titus*, 29 FCC Rcd 14066, 1407, FCC 14-177, released on November 6, 2014.<sup>2</sup> But here there is no allegation, whether FCC-related or not, that resulted in a conviction, or even an the allegation of a felony.

The Bureau has failed to show that this case falls into either one of the established exceptions to the ten-year bar. The Bureau has not offered a single case where the Commission considered conduct beyond the ten years, without it falling well within one or both of the two exceptions. And, stating that the Commission “retains discretion,” the Bureau has failed to state any reason that such discretion, if it exists at all, should be applied in this case. The entire case must be dismissed as a matter of law.

The opposition, at p. 2, states that there is pending an enlargement motion, regarding the ownership and control of Movants. So the question of who owns or controls these entities, or who may represent them, “remains unsettled.” While we can agree that those issues would help to resolve the scope of possible culpability in the alleged misconduct, they cannot be separated from the numerous allegations of persons who may or may not have acted in Movants' name. All such allegations have an inherent nexus with the previously designated issues, or they would have no place in this docket. All are the product of events more than ten years old. With the dismissal of the action, the enlargement petition must be dismissed as moot.

The opposition disputes the party status of Movant, p. 2 and fn. 4. Movants have entered an appearance herein, serve papers and are served with papers. To deprive them of the opportunity to offer a properly supported and argued motion would raise important questions of due process of law. But ultimately this does not matter. An important question of law, the time bar to this proceeding, having been raised on the record and briefed, the judge can take it up on his own motion and rule, regardless of the status of the Movants. Currently pending from the

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<sup>2</sup> Citation is to 1990 modification, 5 FCC Rcd 3252 (1990). *David J. Titus* reversed the initial decision, 25 FCC Rcd. 2390 at 2395 (ALJ, 2010).

Bureau is a voluminous motion for an order to compel Movants and their counsel to respond to documents demands and interrogatories. Evidently, the Bureau cannot decide whether the Movants are parties or not.

Even more curious is the argument, p. 3, that movants do not represent William Zawila and some other parties. Therefore the motion “offers no basis” to dismiss any of the issues designated against the others. The question of whether the case against Mr. Zawilla is dropped would not be Movants' concern. But we fail to understand how the tribunal, presented with a valid legal argument, so that the issues against Movants must be dismissed, could then proceed with blinders on to pretend that the argument has no broader applicability and continue to litigate matters that are beyond the judge's delegation as a matter of law.

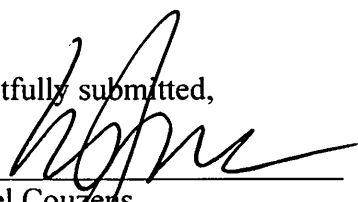
We noted the Commission's purpose with the ten-year limit was to avoid the “inherent inequity and practical difficulty” in requiring applicants to respond to allegations of greater age. We mentioned the death of three witnesses, and we could have mentioned the Bureau's numerous demands for documents in the Commission's files, which they should have had in their files already and which may have been lost. Without addressing any of this, the Bureau resorts to blame shifting. It claims that the ten-year descent of this case into the mists of time is the fault of the parties generally. (The opposition singles out Movants but that is not entirely fair.) The facts do not support this claim. The HDO here was adopted on July 1, 2003. On motion by Mr. Zawila the then-judge granted a stay of the proceeding in September 2003, and again in March 2004. We are unsure what has happened in the subsequent years, but it hardly seems fair to blame Movants for that fact that nothing happened in 2005, nor in 2006, nor in 2007, nor in 2008, nor in 2009, nor in 2010, nor in 2011, nor in 2012 and until time had run out on the adjudication of any of these matters.

Finally, the opposition concludes with the dramatic flourish that a dismissal “would make a mockery of the Commission's hearing process.” To the contrary, it is the delays that mock due

process and nothing can undo that fact now. Conducting an oral evidentiary hearing next year, and publishing an initial decision perhaps in 2017, approaching twenty years from the underlying facts, would be perceived as ridiculous. We are here today in 2015, where justice cannot be done through adjudication.<sup>3</sup>

Dated: October 2, 2015

Respectfully submitted,

  
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Michael Couzens  
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Services, Inc.*

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<sup>3</sup> Previously, in our June 24, 2015, Opposition to a Motion to Enlarge Issues, we argued that any monetary forfeiture would be unenforceable, under 28 U.S.C. Section 2462, unless the enforcement action in court “was brought within five years from the date when the claim first accrued. . . .” We cited that statute here, again. Needless to relate, the Bureau has nothing to say about that insurmountable problem, in the unlikely event that this case is permitted to end with an initial decision.

## CERTIFICATE OF SERVICE

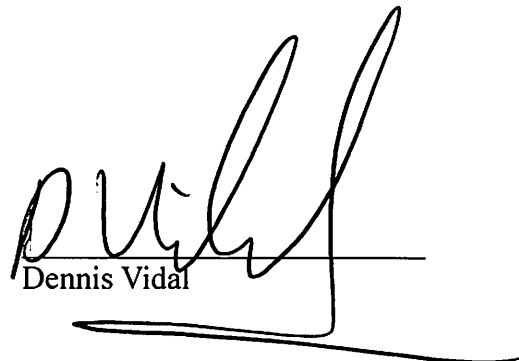
I, Dennis Vidal, a paralegal at Michael Couzens Law Office, certify that on this 2<sup>nd</sup> day of October, 2015, I sent copies of the foregoing "REPLY TO OPPOSITION TO MOTION TO DISMISS ENTIRE PROCEEDING" via first-class mail to:

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